ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services in the United States	)	IB Docket No. 96-111
and	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
and	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

To: The Commission

MOTION FOR LEAVE TO SUBMIT LATE-FILED REPLY COMMENTS

Lockheed Martin Corporation ("Lockheed Martin") hereby motions for leave to submit late-filed comments in the above-captioned proceeding. Lockheed Martin initially sought a general extension of the reply deadline in this proceeding until this Friday, September 12, 1997 due to the significant volume of comments filed, the relatively brief length of the reply period, and the intervening Labor Day holiday. However, in view of the urgency of completing this proceeding and the lack of any general call for additional time for submission of reply comments, Lockheed Martin has withdrawn this request in favor of seeking the Commission's permission to

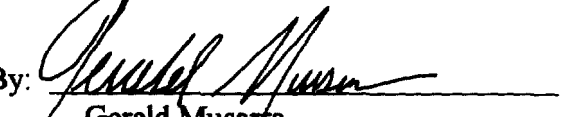
file its reply comments at this time. *See* Letter from Gerald Musarra to William F. Caton, dated September 5, 1997. Accordingly, Lockheed Martin hereby requests that it be granted leave to file its attached reply comments today, September 10, 1997.

Lockheed Martin believes that no party to this proceeding will be harmed by late-acceptance of the attached comments. Because the deadline is a final reply deadline, there is no further opportunity for additional comments to be filed. Thus, no party will be disadvantaged by a reduction of time within which to respond. Lockheed Martin regrets its delay in filing, but respectfully observes that the modest three business day lapse should not hamper the Commission in its final consideration of the issues presented. At the same time, the public interest will be enhanced by a complete record of views concerning the proposals advanced in the Commission's Further Notice.

Accordingly, Lockheed Martin respectfully requests that its attached comments be accepted and considered in this docket.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

By: 

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September 10, 1997

BEFORE THE

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To: The Commission

REPLY COMMENTS OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation, ("Lockheed Martin"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby replies to comments filed in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned proceeding.[1/] Lockheed Martin has previously filed comments and reply comments concerning the Commission's initial Notice of Proposed Rule Making in this proceeding, as well as comments in response to the

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1/ *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services In the United States, FCC 97-252, slip op. (released July 18, 1997) ("Further Notice").

Further Notice. Because these filings give the Commission a full record of its views concerning the issues raised in this proceeding, Lockheed Martin limits these reply comments to a few discrete matters of particular importance. First, Lockheed Martin wishes to emphasize that there is a broad consensus in this proceeding that the FCC must carefully implement the WTO Agreement in a manner that will encourage other administrations to implement their commitments in a manner which will bring greater openness to their own markets. Second, Lockheed Martin believes that the Commission should not impose a route-by-route analysis on requests for access either to (1) a non-U.S., non-WTO satellite system, or (2) WTO-systems on non-WTO routes. Application of a route-by-route analysis would be overly cumbersome and, for WTO systems, would potentially run afoul of U.S. commitments for national treatment. Third, Lockheed Martin urges the Commission to assess very carefully what regulatory fees are appropriate for a non-U.S. notified system to cover the administrative costs incurred by the FCC on its behalf. Finally, Lockheed Martin believes that the FCC should not delay in implementing its WTO commitments by initiating a new rulemaking for those entities, such as ISO affiliates, covered by the WTO Agreement. Each of these issues is briefly discussed below.

1. The Commission Should Take Care To Avoid Domestic Requirements That Could Prompt Adverse Responsive Measures From Other Administrations.

From the beginning of this proceeding, Lockheed Martin has strongly supported the Commission's initially stated view that the procedures employed by the FCC for permitting access by non-U.S. satellite systems must not be the equivalent of relicensing these systems to operate in

the United States.[2/] Most of the other parties participating in this proceeding have also vigorously argued in favor of minimizing the burden placed on non-U.S. satellite operators with an eye toward the impact that the FCC's measures concerning market access will have abroad.[3/] It is vital for the future success of the U.S. satellite industry that the Commission take these concerns to heart and eliminate from consideration any requirements that suggest re-licensing of satellites or other restrictions that are not consistent with the WTO Agreement.

In particular, the Commission's proposal to demand from non-U.S. operators the full financial, legal and technical information required from applicants for U.S. system licenses is ill-considered and should be abandoned. Under no circumstances should it be necessary for these operators to make the full legal or financial qualifications showing that is required of U.S. applicants. These requirements are purely aspects of U.S. licensing of space stations, and therefore have no place in a process that is focused solely on allowing market access via earth station licensing. Thus, if an operator has already received a license from another administration and ITU coordination has been completed, all that ought to be required is information identifying a prospective entrant's legal ownership and, if applicable, an appropriate ECO-Sat showing. For prospective operators not yet licensed and coordinated, technical information would also be necessary.[4/] As Columbia Communications Corporation has suggested, however, this information

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2/ *See* Lockheed Martin Comments at 4-7 (filed July 15, 1997).

3/ *See, e.g.,* Airtouch Comments at 2; Hughes Comments at 17; ICO Comments at 17-18; Orion Comments at 16; Skybridge Comments at 2-3.

4/ It is, of course, appropriate for all non-U.S. operators seeking access to the U.S. market to be subject to all U.S. technical and operating requirements relating to interference

(continued...)

could be collected simply by having such parties submit copies of the technical proposal submitted in connection with their pending non-U.S. applications.[5/] To go beyond these basic requirements would be unnecessarily burdensome and would court imposition of similarly unnecessary requirements on U.S. systems seeking market entry abroad.

These concerns would argue equally against the need to impose the full amount of regulatory fees on non-U.S. notified systems which would not appear to benefit to the same degree as U.S. notified systems from FCC services. The Commission's authority to collect regulatory fees is intended to recover the costs of regulation from those entities that benefit from the services that the FCC provides.[6/] In particular, the statute directs the Commission to set fees covering its costs for enforcement activities, policy and rulemaking activities, user information services and international services.[7/] With respect to U.S. space station licensees, a principal FCC service covered by this last category, international activities, relates to the international coordination process administered by the International Telecommunications Union ("ITU"). The ITU process includes the requirement of each administration to file the appropriate advance publication and request for coordination materials, and subsequently, to enter into bilateral discussions with other administrations, accompanied by the U.S. space station licensees, to seek coordination of these

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[4/](...continued)
protection and efficient spectrum use.

[5/] *See* Columbia Comments at 8.

[6/] *See, e.g.,* Assessment and Collection of Regulatory Fees for Fiscal Year 1997, FCC 97-49, slip op. at ¶ 4 (released March 5, 1997).

[7/] *See* 47 U.S.C. § 159(a)(1).

U.S.-notified systems. The FCC has no comparable responsibility to make such filings or to initiate such coordinations on behalf of non-U.S. notified systems. Therefore, it would appear that there may be expenses, such as these, that would be appropriately recovered only from U.S. space station licensees. The FCC may need to develop a more transparent cost-recovery process in order to ensure that costs are properly recovered from only those regulated entities producing those costs. Otherwise, the FCC runs the risk that an attempt to apply the same regulatory fee structure to non-U.S. notified space station licensees (which do not appear to benefit from all of the regulatory services provided by the FCC) will be reviewed as some type of subsidization of the overall regulatory process, rather than true cost recovery. Therefore, the FCC should balance any desire to impose charges to cover regulatory costs on U.S. and foreign-notified systems alike against the need to avoid penalizing WTO or non-WTO systems for simply choosing not to apply for a U.S. space station license, preferring perhaps their intended principal place of business.

Moreover, the Commission ought not separately consider "trade" concerns in connection with access requests from WTO member nations. *See* Further Notice at ¶ 37. All WTO members have agreed to put aside their unilateral ability to consider trade concerns in the licensing process upon the conclusion of the WTO Agreement. More specifically, the U.S. determination to conclude the WTO Agreement should be considered as a reflection of a larger decision by both industry and the government that foreign commitments obtained outweighed the potential competitive risk posed by WTO "free riders." Naturally, however, should our WTO trading partners fail to honor these commitments, the U.S. Government does then have the responsibility to consider whether dispute resolution mechanisms are appropriate. Legitimate national security or

law enforcement concerns, nonetheless, remain factors that could justify rejection of an access request under the Commission's public interest review.

2. The Commission Should Not Employ A Route-By-Route ECO-Sat Analysis As Such An Approach Would Be Unreasonably Cumbersome.

While Lockheed Martin endorses the Commission's proposal to continue applying an ECO-Sat test to requests to access the capacity of non-U.S. satellites from non-WTO member nations, it does not believe that this analysis needs to extend beyond an inquiry into the competitive opportunities available in the system's "home" market, *i.e.*, its principal place of business. Nor does it believe that requests to access non-U.S. WTO systems should be subject to an ECO-Sat analysis for those non-WTO routes to be served. As Lockheed Martin stated in its previous comments, such a requirement would appear to be inconsistent with the U.S. obligation to provide National Treatment to WTO systems given the fact that U.S. systems are not subject to such a requirement. Requiring demonstrations of market openness for each market that an operator proposes to serve would be unreasonably burdensome, particularly for those operating global satellite systems, without providing any significant benefits toward promoting competition. Lockheed Martin believes that if a satellite operator is subject to competition in its home market (*i.e.*, principal place of business), then it is significantly less likely to have market distorting capabilities in other route markets that it serves. Rather than examining the regulatory environment along each route to be served, the Commission would be better advised simply to consider appropriate safeguards governing the conduct of authorized operators.

3. The U.S. Must Implement Its WTO Commitments For All Covered Services And Categories of Entities by January 1, 1998.

As stated in its initial comments in this Further Notice, Lockheed Martin recognizes that intergovernmental satellite organizations (IGOs) do not benefit from the terms of the WTO Basic Agreement. However, Lockheed Martin does not believe that privatized entities that are either affiliates or spin-offs lie outside of the scope of the WTO Agreement, so that they would not presumptively benefit from the terms of the WTO Agreement based upon their "home market" (i.e., principal place of business). Thus, while the U.S. is under no obligation to implement rules on access to the IGOs by January 1, 1998, with respect to non-IGOs, Lockheed Martin believes that the U.S. is under an obligation to implement the WTO for all covered services and entities (including IGO-affiliates and spin-offs) by the WTO implementation deadline. Moreover, it would seem appropriate that the same general framework for market access would apply to all requests to access non-IGO entities, depending only on whether the "home market" is a WTO-member country. The finalization of this framework will serve as guidance to all entities interested in serving the U.S. market.

Lockheed Martin reiterates its previous comments that restructured entities can be evaluated under the ECO-Sat test if non-WTO-based or under the WTO-Member standard which is currently proposed retains the ability for the FCC to consider the impact on competition in the U.S. market.[8/] (Indeed, a competition analysis can be applied to any non-IGO entity.) In fact, in responding to concerns about the effect of a future spin-off of INTELSAT on the U.S. satellite

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8/ *See* Lockheed Martin Comments at 8.

services market, the USTR has stated that existing U.S. communications and antitrust law, regulation and policy will continue to apply to license applicants even in a post-WTO environment.[9/] The USTR further stated that the U.S. would not grant market access to any form of spin-off if it would likely lead to anticompetitive results. Therefore, it would appear that the ability for the FCC to continue to apply its competition analysis affords both the U.S. Government and interested parties the opportunity to address specific concerns raised by the ISO spin-off.

CONCLUSION

Based on the foregoing discussion, as well as Lockheed Martin's initial comments in this Further Notice and its comments and reply comments on the initial Notice, we urge the FCC to conclude this proceeding as soon as possible. There is no doubt that actions taken by the Commission in this proceeding will impact the spirit in which other countries comply with their outstanding WTO commitments. Therefore, the sooner the Commission is able to bring this to

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9/ *See, e.g.*, Letter from the Honorable Charlene Barshefsky, U.S. Trade Representative-Designate to Neil Bauer, President and Chief Executive Officer, Orion Network Systems, Inc., dated February 12, 1997.

closure, the sooner other administrations can borrow from the model set in this proceeding, enabling U.S. industry and entities abroad, to benefit from the WTO Agreement.

Respectfully submitted,

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